



Order under Section 30  
**Residential Tenancies Act, 2006**

**File Number:** HOT-09195-20

**In the matter of:** 1910, 9 GEORGE STREET N  
BRAMPTON ON L6X0T6

**Between:** Zaheeda Nasser

**and**

David Thomas

I hereby certify this is a  
true copy of an Order dated

**June 24, 2022**

Landlord and Tenant Board

Tenant

Landlord

Zaheeda Nasser (the 'Tenant') applied for an order determining that David Thomas (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing, or maintenance standards.

This application was heard videoconference on November 26, 2021.

The Tenant and the Landlord and his legal representative attended the hearing.

Preliminary Issues:

1. At the hearing, the Tenant requested the Board's permission to amend the application to remove her claim for reimbursement for the personal items that were damaged as a result of the flood. She stated she had not contacted her insurance company at the time she filed the application. The Tenant confirmed that she received compensation from the insurance company for damages to her personal items. Accordingly, she requests to amend the application instead to include the \$500.00 deductible the Tenant was required to pay to her insurance company. I granted the request.

**Determinations**

2. The majority of the maintenance issues raised in the application are the result water damage to the rental unit after a flood. The other non-flood related issues involve a sliding closet door and a burnt-out light bulb and poor air quality.
3. The parties are in agreement that on November 25, 2019, the kitchen faucet burst causing water to come pouring out of the pipes. The Tenant was unable to stop the flow of water because she did not know how to turn off the shut off valve. A tenant in an adjoining unit notified the superintendent and he arrived shortly thereafter to turn off the water.

4. The Landlord removed the baseboards and used “shop vacs” to collect the standing water off the floors and carpets. They also set up a number of fans for approximately 48 hours to further remove any moisture in the rental unit.
5. The Tenant submitted aside from the initial response of the Landlord nothing further was done until January 16, 2020, when the Tenant received an email from the Landlord that ServiceMaster was hired to complete the repairs to the rental unit. In addition, since he was going to be out of country until March 2020, the Landlord advised that Daniel Thomas would be the contact person and Landlord’s agent in his absence. The Tenant was provided with the contact information for ServiceMaster and told to organize the scheduling of the repairs.
6. The Tenant testified that she received an email from ServiceMaster on February 3, 2020, to advise they would require two weeks notice to start work and they would not be responsible for moving furniture. The Tenant left a message for Landlord’s agent to advise him that she needed someone to move the furnishings since the contractors would not.
7. The Landlord explained the delay was due in part to the work that needed to be done and finding a contractor to complete the work due to Covid. The Landlord submitted he contacted 7 contractors to get a quote on the repairs.
8. The parties agree the rental unit was not returned to the condition prior to the flood for almost a year.
9. Pursuant to subsection 20(1) of the *Residential Tenancies Act, 2006* (the ‘Act’), landlords have a duty of care to repair and maintain the property. There is no dispute that reasonable steps were taken in a timely fashion to address the flood when it first occurred. They turned off the water, removed the excess water with shop vac and installed fans to dry the area and removed the baseboard to allow them to dry. However, the rental unit sustained some damage, and these repair issues were not dealt within a reasonable time frame. For the reasons that follow, the Landlord breached his obligation under s.20 of the Act.

#### Out of Pocket Expenses

10. As stated above, the Tenant had renter’s insurance that covered the costs to replace her belongings that were damaged as a result of the flood. Although she is no longer seeking compensation for items damaged as a result of the flood is seeking compensation for her insurance deductible in the amount of \$500.00.
11. The Tenant’s request is denied for the following reasons. The flooding that occurred was not related to any failure of the Landlord to maintain the rental property in a good state of repair. A landlord who had no knowledge or could not reasonably be expected to have knowledge of a maintenance problem can not be held financially liable for damage to a tenant’s belongings because of a latent defect (see *McQuestion v. Schneider*, [1975] O.J. No. 2279, 8 O.R. (2d) 249). There was no forewarning that there was a problem with the faucet prior to it bursting. Accordingly, since the Landlord cannot be held liable for the

damage done to the Tenant's belongings, I do not find it appropriate to award the Tenant's insurance deductible to have them replaced or repaired.

#### Baseboards

12. There was no dispute that the baseboards were immediately removed to dry on the same day as the flood. However, the baseboards were never re-installed until December 10, 2020. The Landlord did not make any submissions regarding the baseboard.
13. The Tenant stated that the lack of baseboards permitted smells from another other unit to enter her unit. She provided photo evidence which shows the baseboards missing.
14. I am not satisfied that the lack of baseboards would permit smells from another unit to enter her unit. Baseboards are normally used to cover uneven edge of flooring, to protect walls from kicks, abrasion, and furniture, and to serve as a decorative molding. As stated above, I find the resulting delay in reinstalling the baseboards constitutes a breach of the Landlord's maintenance obligations. The impact on the Tenant of not having the baseboards would have been minimal. As such I find that a lump sum abatement for rent in the amount of \$100.00 is appropriate in this case.

#### Flooring / carpet and underlay

15. It was the Tenants evidence is the flooding caused damage to the flooring in the dining room, living room and hallway and guest bedroom.
16. The Tenant submitted that the flooring in the living and dining areas had sustained water damage resulting in uneven and lifted laminate floorboards that moved when stepped on and created a tripping hazard on the uneven areas. The photographs submitted into evidence reveals the laminate flooring lifted and uneven in some areas. Other photos show both small and large gaps between the floorboards.
17. The Landlord submitted that the issues with the flooring in the living/dining and hallway were all aesthetic and there were no health or safety concerns. The Landlord also submitted that it was the opinion of the contractor that there was nothing wrong with the luxury flooring that it was in the same conditions as before with no additional damage and the repairs were decorative.
18. The Landlord has the obligation to ensure the flooring is in good state of repair. Based on the evidence, I am satisfied the gaps between the boards and uneven surface supports a finding that the laminate flooring requires repairs or replacement.
19. The carpeting in the bedroom was frayed and the underlay was stretched. The Tenant submitted photo evidence which shows the edge of the carpet is frayed and the carpet bunched at the entryway of the room. The Tenant stated that the flooring was inspected by Markam Carpets on June 27, 2021. The carpeting was scheduled to be replaced on July 24, 2021, but was finally replaced on July 26, 2021. The Landlord did not challenge the Tenant on her evidence.

20. Given the evidence before me, I am satisfied that the carpet and underpadding could not be said to be in good state of repair after the flood. Accordingly, I find that the Landlord was in breach of the Landlord's maintenance obligations under s. 20 of the Act.
21. The remedies sought by the Tenant for the flooring and carpet issue is an order to repair or replace, a rent abatement, and prohibition for any rent increase until the work is completed.
22. The Landlord shall be ordered to repair or replace, as necessary, any areas of the flooring that has uneven flooring and to eliminate the gaps between the floorboards. Since the carpet has been replaced that issue is moot.
23. An abatement of rent is a contractual remedy based on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. The monthly rent for the unit was \$1,800.00. It was the evidence before me that various areas of the floor were uneven, and the carpeting bunched and frayed in areas. Given all the evidence before me, including the impact statement of the Tenant, I am of the view that a reasonable abatement of the rent would be \$1,026.00 which represents a 5% rent abatement for the nine months and 3% abatement after the carpet was replaced until the hearing date.
24. I do not find it appropriate to order that the Landlord cannot increase the rent for this rental unit would be an appropriate remedy because the ongoing maintenance issues do not rise to the level of a finding of serious maintenance breach.

#### Ceiling texture

25. The Tenant testified the spraying water from water pipes damaged a section of the kitchen ceiling causing the "popcorn" texture on the ceiling to fall off. The Tenant submitted photographs into evidence which shows the section of the ceiling without texture. There was no further evidence regarding the ceiling as to whether it was repaired or replaced.
26. The impact on the Tenant is minor as it does not detract from her enjoyment of the rental but only negatively affect the aesthetics of the unit. I find an abatement of rent not reasonable in this case.
27. The impact on the Tenant is minor as it does not detract from her enjoyment of the rental but only negatively affect the aesthetics of the unit. I find that a small lump sum abatement of \$25.00 would be appropriate in this instance.

#### Other Maintenance Issues

28. The Tenant raised other maintenance issues with respect to her unit. The closet door was not sliding properly, there was poor air quality and the led bulb burnt out in the kitchen fixture.

#### Sliding closet door

29. It is not disputed that the sliding closet door was sticking. The Tenant submitted that the closet was adjusted several times. On December 7, 2019, the closet came off the track

and on December 9, 2019, the doors were removed completely and not replaced or re-installed to date.

30. The Landlord submitted that the Landlord's contractor attended to this door a few times and eventually removed the door he has not been able to replace the doors and has plans to do so when the unit is vacated.
31. The Landlord response to the Tenant's complaint was not appropriate. Accordingly, I find that the Landlord breached his obligation under s. 20 by failing to repair or replace the sliding doors in the Tenant's bedroom. Pursuant to section 47 of the Ontario Regulation 517/06, the Landlord is responsible so every interior door is maintained so that it is capable of performing its intended function and any damaged or missing parts shall be repaired or replaced.
32. The remedies sought by the Tenant is an order for repair and a rent abatement. The Landlord shall be ordered to repair or replace the door.
33. Although the impact of the missing closet doors is cosmetic and was not substantive, she was without closet doors for almost two years. Given all the evidence before me, I find an abatement of rent of 1% or \$414.00 from December 2019 until November 2021 (date of hearing) is appropriate in this case.

#### Poor indoor air quality

34. The Tenant submitted that the air filter for the unit was never changed, nor was the ducts cleaned since the beginning of her tenancy in 2016.
35. It is her evidence that she was not aware air filters needed to be changed until the home inspection was done on December 3, 2020. The report noted the filter needed to be replaced. The Tenant emailed the Landlord's agent on January 11, 2021, requesting that the air filter be changed it was three days later.
36. The Landlord' evidence is that the air filter is changed in every unit by the Condo management annually. Residents are free to purchase additional air filter from the reception should they choose to change the air filter more often. However, in 2020 the management did not change the filter due to Covid and the company that normally undertakes the filter change was closed due to the pandemic. The Landlord submitted into the evidence the Notices from 2016 to 2021 confirming annual fan coil cleaning and filter change were done.
37. The Landlord also submitted that the inspection report done on December 3, 2020, also indicates that no musty smell or moist air was noted inside the unit. This report was submitted into evidence by the Landlord.
38. I am not satisfied that the Tenant has establish that the air quality within the rental unit failed to meet some municipal or health standard. Accordingly, I do not find that the Landlord failed to meet his maintenance obligations under the Act or failed to comply with

health, safety, housing, or maintenance standards. This portion of the Tenant's application shall be dismissed.

Led bulb burnt in kitchen fixture

39. The Tenant's evidence is that the led bulb in the kitchen had been blown out since November 2020. She never changed it herself because of the screws and it was a special kind of lighting.
40. The Landlord's evidence is that according to the lease, the Tenant is responsible to replace bulbs if required. Although it is written in the lease, the Landlord would arrange their handyman and change it for her at the Landlord's expense. During Covid it was more difficult to get it done.
41. Normally light bulbs are not the Landlord's responsibility. The only exception to this would be if there was a specialized lighting that required bulbs not commonly found or a service or assistance was required to instal the light. In this case, the Tenant did not provide any evidence that this was a specialty fixture requiring a specific bulb. Therefore, I do not sufficient evidence that the Landlord breached his obligation under s. 20 of the Act. Accordingly, this part of the Tenant's application shall also be dismissed.

**It is ordered that:**

1. The Landlord shall pay to the Tenant a rent abatement of \$1,565.00.
2. The Landlord shall repair or replace the following with 30 days of the issuance of this order:
  - the laminate flooring in the areas where the boards are uneven or where gaps are noticeable; and
  - The closet doors in the master bedroom
3. The Landlord shall also pay the Tenant \$48.00 for the cost of filing the application.
4. The total amount the Landlord owes the Tenant is \$1,613.00.
5. The Landlord shall pay the Tenant the full amount owing by July 5, 2022.
6. If the Landlord does not pay the Tenant the full amount owing by July 5, 2022, the Landlord will owe interest. This will be simple interest calculated from July 6, 2022, at 2.00% annually on the outstanding balance.
7. If the Landlord does not pay the Tenant the full amount owing by August 1, 2022, the Tenant may recover this amount by deducting 1,613.00 from the rent for August 1, 2023.

The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.



**June 24, 2022**  
**Date Issued**

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**Nicole Huneault**  
Member, Landlord and Tenant Board

Head Office  
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Toronto Ontario M5G2E5

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.